

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
UNITED STATES)	
)	
v.)	Case. No. 1:13-CR-58 (ABJ)
)	
)	
JESSE L. JACKSON, JR.,)	
)	
Defendant.)	
_____)	

SENTENCING MEMORANDUM OF JESSE L. JACKSON, JR.

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I. INTRODUCTION

On February 20, 2013, Mr. Jackson pleaded guilty to one count of conspiring to defraud his Congressional campaign of approximately \$750,000 over seven years. In the Statement of Offense filed with the Court as part of Mr. Jackson's plea, he acknowledged that he used campaign funds for personal expenses rather than for their intended use: to cover the legitimate costs associated with his reelection.

Mr. Jackson has accepted complete responsibility for his actions. He is remorseful and has agreed to repay all the funds he misappropriated and to forfeit items he purchased with them. Mr. Jackson has resigned from Congress, where he served the public for seventeen years, and has acknowledged his wrongdoing in Court and before his family and friends. He in no way seeks to minimize either his conduct or his culpability. Through this memorandum, Mr. Jackson will provide the Court with the necessary information about his background and characteristics to permit the Court to sentence him in accordance with the law.

Mr. Jackson's history and characteristics, including his good works and family ties, argue for a below-Guidelines sentence. Mr. Jackson's severe depression and bipolar disorder require intense ongoing treatment. His mental health may well worsen under the stress of incarceration, making a below-Guidelines sentence crucial to his continued well-being. Mr. Jackson does not represent a threat to the public given his age and his lack of a criminal history. His public fall from grace has already made an example of him, warning other politicians and elected officials of the dangers of personal use of campaign funds. Even a below-Guidelines sentence would reflect the seriousness of his conduct, promote respect for the law and deter other criminal conduct.

II. PERSONAL HISTORY

A. Upbringing and Family

Mr. Jackson was born on March 11, 1965 in Greenville, South Carolina. He is the son of Rev. Jesse Jackson and Jacqueline Jackson, née Brown. Throughout Mr. Jackson's life, his father has been a leading voice for equality and justice in this country and around the world. Rev. Jackson ran for President of the United States twice and was the first African-American to win a presidential primary. Mr. Jackson's life has been dominated and defined by his family's legacy of activism and service.

As a child, Mr. Jackson was filled with energy but also serious. One of his many babysitters described him as "your typical 6 year old boy (curious, hyper, playful, and talkative) and your atypical 6 year old (very neat, didn't like his clothes to get dirty, and loved writing and reading)." Declaration of Brian M. Heberlig ("Heberlig Decl.") ¶ 3 (Ex. 1 – letter from Jan Camps Coleman).¹ A high school friend writes that even at that young age, Mr. Jackson "was unusually caring about the world around him, focused on preparing himself to make a difference, and building a team of individuals of substance with like interests." Heberlig Decl. ¶ 4 (Ex. 2 – letter from Ray Anderson, Jr.).

Mr. Jackson married Sandi Jackson, née Stevens, in 1991 in Chicago, Illinois. Until recently, Mrs. Jackson served as a Chicago city alderwoman. Together they have raised two children: a daughter, age 13, and a son, age 9. The family lives in Chicago and Washington, D.C. The lives of Mr. Jackson's children have been defined by their parents' public service, just as Rev. Jackson's service influenced Mr. Jackson's own upbringing. In his letter to the Court,

¹ Over one hundred friends, family members, constituents and supporters have written letters to the Court on behalf of Mr. Jackson. Those letters not cited in this Sentencing Memorandum are attached to Mr. Heberlig's Declaration at Exhibit 30.

Rev. Jackson writes that Mr. Jackson is “selfless in sacrifice and devotion to his family; charting for them a course of helping others. It is his heritage that he leaves to them.” Heberlig Decl. ¶ 5, (Ex. 3 – letter from Rev. Jesse Jackson, Sr.). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the months since his resignation from Congress, Mr. Jackson has refocused his energy on his family relationships, particularly with his children. Draft PSIR ¶ 92. Mr. Jackson knows well that his conduct and its consequences will affect them negatively and for that he has great remorse. Mr. Jackson also appreciates that the stain of his conviction will spread to his siblings and parents, who nonetheless continue to stand by him. Mr. Jackson’s mother, father and sister have written lengthy letters expressing their love and support for him. Heberlig Decl. ¶¶ 5-7 (Ex. Nos. 3, 4, and 5 – letters from Rev. Jackson, Sr., Jacqueline Jackson, and Santita Jackson).

B. Education and Writing

Mr. Jackson graduated from St. Albans School in Washington, D.C. in 1983 before attending North Carolina Agricultural and Technical State University in Greensboro, North Carolina. In 1987, after just three years there, he graduated magna cum laude with a Bachelor of Science in Business. Mr. Jackson then earned his Master of Arts in Theology from Chicago Theological Seminary in 1989. Mr. Jackson continued his education at the University of Illinois College of Law in Urbana-Champaign, earning his Juris Doctor in 1993.

Several of the letters sent to the Court on Mr. Jackson’s behalf praise his scholarship and writing on American constitutional history. Heberlig Decl. ¶ 8, 5 (Ex. Nos. 6 and 3 – letters from Derrick Anderson and Rev. Jackson, Sr.). Mr. Jackson has co-authored three books. Two

of these deal with financial literacy. The third, *A More Perfect Union*, advocates for the passage of a series of constitutional amendments that would guarantee all Americans the right to vote, and the rights to high-quality education, health care and housing.

C. Civil Rights Activism

Even prior to his entry into elective politics, Mr. Jackson has sought to improve the world around him. From a young age, Mr. Jackson was an activist for social justice. A close friend writes to the Court that “[a]s a teenager, Jesse was unusually caring about the world around him, focused on preparing himself to make a difference, and building a team of individuals of substance with like interests.” Heberlig Decl. ¶ 4 (Ex. 2 – letter from Ray Anderson, Jr.).

At college, Mr. Jackson ran voter registration drives and organized protests against the apartheid government of South Africa. Heberlig Decl. ¶ 9 (Ex. 7 – letter from Frank Watkins). He participated in his father’s presidential campaigns. He joined the Rainbow Coalition, working to support its two missions: to protect, defend, and advance civil rights by leveling economic and educational playing fields and to promote peace and justice around the world. There he upgraded the group’s technology, coordinated outreach to clergy and professors and helped transform the Rainbow Coalition into a modern political organization. *Id.*

D. Congressional Career

As a Member of Congress representing Illinois’s Second Congressional District for seventeen years, Mr. Jackson came to the aid of his country, his district and his constituents in ways great and small. From day one, Mr. Jackson took his responsibilities in Congress very seriously. His voting record was legendary: in the first fourteen years of his Congressional career, he missed only two votes. As a member of the House Appropriations Committee, Mr. Jackson was a constant advocate for his constituents in Chicago, especially those in the city’s poorest areas. John Hofmeister, former President of Shell Oil Company and Chairman of

the National Urban League writes to the Court that “[i]n all my meetings with Congressman Jackson, I was continuously impressed by his interest, curiosity, commitment and dedication to serve the needs of his constituents and the nation.” Heberlig Decl. ¶ 10 (Ex. 8 – letter from John Hofmeister).

Mr. Jackson was a leading supporter of the proposed third airport for the Chicago metropolitan area, which he believed would bring much-needed jobs and economic activity to the South Side of Chicago. He also advocated for redevelopment of the former U.S. Steel South Works site in the South Shore neighborhood. He secured over \$1 billion in federal funding for infrastructure, health care, education, transit, housing, community centers and other projects in the Second District.

1. Addressing Minority Health Disparities

In 2000, Mr. Jackson was a key sponsor of successful legislation to create the National Center on Minority Health and Health Disparities at the National Institutes of Health. The bill resulted in more than \$2.25 billion for research to resolve health disparities facing minority and underserved populations. In 2010, the Affordable Care Act elevated the Center to a National Institute of Health.

Through his position on the House Appropriations Committee, Mr. Jackson increased funding to the federal Minority HIV/AIDS Initiative from \$166 million in 1999 to \$450 million by 2012.

2. Securing Aid for Impoverished and War-Torn Nations

In 2005, Mr. Jackson secured \$500 million in federal funds for food, peacekeeping operations and refugee and humanitarian aid in the Darfur region of Sudan. In 2006, he directed \$50 million to infrastructure needs and civil services in Liberia.

Mr. Jackson directed the passage of legislation eliminating user fees from World Bank-funded health care and education services in developing countries. He also passed legislation that prohibited the International Monetary Fund from limiting foreign government spending on public health care and education programs.

3. Marking America's Civil Rights Legacy in the United States Capitol

Mr. Jackson carried on his family's civil rights legacy in Congress. He authored two bills that ensured that America's struggles against slavery and for equal rights would be remembered in the corridors of power. The first bill named the largest room in the Capitol "Emancipation Hall" in recognition of the contributions of the enslaved laborers and craftsmen who helped build the Capitol. Heberlig Decl. ¶¶ 11-12 (Ex. Nos. 9 and 10 – letters from Reps. Barbara Lee and Sheila Jackson Lee).² The second bill directed a statue of Rosa Parks to be placed in Statuary Hall, becoming the first statue of an African-American woman to be displayed in the Capitol. *Id.* Both of these bills ensure that visitors to Congress will be reminded of America's civil rights history for decades to come.

4. Providing a Community with Safe Drinking Water

One of Mr. Jackson's proudest accomplishments as a Member of Congress was finding a solution to the persistent water and flooding issues in Ford Heights, Illinois, one of the country's poorest suburbs. For years, residents of the neighborhood complained that the drinking water in the neighborhood was "yellow" and "filled with rust" and that it flowed "through corroded pipes" and "smelled like the sewer." Heberlig Decl. ¶¶ 13-15 (Ex. Nos. 11, 12 and 13 – letters from Mimi Mesirow, Trunell and Alexis Felder, and Peter Kennedy). The poor quality of the

² Nearly a dozen of Mr. Jackson's former colleagues in the House of Representatives have written letters to the Court on his behalf. Those letters from Members of Congress not cited in this memorandum are attached to Mr. Heberlig's Declaration at Exhibit 29.

water was so severe that there were no hair salons or car washes in the area. Heberlig Decl. ¶ 13 (Ex. 11 – letter from Mimi Mesirow). Despite the constant complaints from residents, nothing had been done to solve such an important quality of life issue. Heberlig Decl. ¶ 15 (Ex. 13 – letter from Peter Kennedy). As soon as he was elected to Congress, Mr. Jackson sprang into action to address the problem. Heberlig Decl. ¶ 13 (Ex. 11 – letter from Mimi Mesirow). He helped the city obtain a federal grant for a new water tower to provide clean, safe drinking water for the entire community. *Id.* In his letter to the Court, Peter Kennedy, a water quality specialist familiar with Ford Heights, writes that Mr. Jackson “took action and did what no one else had done or seemingly cared to do for the people of Ford Heights, Illinois; he delivered them clean safe drinking water” Heberlig Decl. ¶ 15 (Ex. 13 – letter from Peter Kennedy). Where others had seen an insurmountable challenge in an area with more than its share of problems, Mr. Jackson saw an opportunity to leverage the power of the federal government to improve the lives of his constituents.

5. Bringing Federal Funds to Chicago’s South Side

In his letter to the Court, Illinois State Representative Anthony DeLuca calls Mr. Jackson “a friend of the south suburbs and a champion of economic development, dedicated to the region.” Heberlig Decl. ¶ 16 (Ex. 14 – letter from Anthony DeLuca). Mr. Jackson’s district is one of the poorest in the country. While in Congress, Mr. Jackson secured over \$1 billion in federal funds for construction and infrastructure in his Congressional district, resulting in new roads, hospitals, schools and libraries. His ability to bring federal funds back home greatly improved his constituents’ quality of life and raised the standard of living across Chicago’s South Side.

The Chicago Public School System's federal lobbyist, Ray Anderson, Jr., provides an example of Mr. Jackson's efficacy in bringing badly needed federal dollars to the city. He writes to the Court that:

Congressman Jackson never failed to use his member initiated funding for the good cause of the people of Chicago and the 2nd Congressional District. On each and every occasion that administrators of the Chicago Public Schools brought funding initiatives for me to carry in request to Congressman Jackson, he provided funding. Simply put, if it made sense and got results for children, he gave it a green light. As a result, the Chicago Public Schools received more earmarks to advance the public's interest in providing quality education services than any other district in the nation except New York City

Heberlig Decl. ¶ 4 (Ex. 2 – letter from Ray Anderson, Jr.).

6. Helping Individuals

Throughout his life, Mr. Jackson has made it a priority to help others, leaving a trail of individuals he has assisted in many different ways. He has not sought recognition for these acts, and many have only come to light in the letters sent to the Court on his behalf.

(a) Marty King

Mr. King has known Mr. Jackson since they were teenagers. In his letter to the Court, he tells a story from their years together in law school. Mr. King writes that:

[M]y girlfriend, now my wife, became pregnant and Jr. told me that everything would be okay. As a student that was broke and in over my head he was my anchor throughout that pregnancy. He continued to push my fears away. He stood in the gap for me and held me up. And when my son Christopher was born Jesse gave me several hundred dollars and at the time it felt like several million. It was all the money in the world for me at the time and it went a long way to help feed my new family as well as pay for some health expenses. In his one act of generosity he helped a family feel secure and start off fresh with hope and determination.

Heberlig Decl. ¶ 17 (Ex. 15 – letter from Marty King).

(b) Andre Davis

Mr. Davis spent thirty-two years in prison for a rape and murder he did not commit. Heberlig Decl. ¶ 18 (Ex. 16 – letter from Andre Davis). For years, Mr. Davis wrote to politicians and organizations seeking help to have his conviction overturned. Mr. Jackson was one of the very few who wrote back. Mr. Jackson took up Mr. Davis’s plight and worked with others to raise money for Mr. Davis’s defense and to pay for three DNA tests. Those tests proved Mr. Davis’s innocence and identified the true perpetrator. Mr. Davis writes to the Court that “[t]here isn’t enough ink on this earth that may convey in actual writings of the lives restored and saved in this one effort.” *Id.* He continues “[i]n spite of his imperfections – I testify that Jesse Jackson, Jr. is indeed a good man and an asset in a very challenging society.” *Id.*

(c) Beverly Brown

Ms. Brown writes that in 2012, she pulled Mr. Jackson aside at a fundraiser and told him the story of a mother and a severely disabled daughter who were on the verge of losing their home. Heberlig Decl. ¶ 19 (Ex. 17 – letter from Beverly Brown). Mr. Jackson promptly directed his staff to assist them. Three weeks later, due to Mr. Jackson’s intervention, the home was saved from foreclosure.

(d) Sue Hughes

In her letter to the Court, Ms. Hughes writes that when she first heard Mr. Jackson speak, she was a single mother with very little education, on the verge of losing her home to foreclosure. After the speech, she approached Mr. Jackson and asked him for help. He worked with the bank to keep her in her home, and helped her enter a program to earn her GED thirty-five years after she dropped out of school. In the fall of this year, she will become a full-time college student. She writes “I owe this all to Mr. Jackson.” Heberlig Decl. ¶ 20 (Ex. 18 – letter from Sue Hughes).

(e) Frank Babusci

Mr. Babusci met Mr. Jackson by chance at a pizzeria in Chicago. Heberlig Decl. ¶ 21 (Ex. 19 – letter from Frank Babusci). Mr. Babusci recognized Mr. Jackson and thanked him for his service to the community. Mr. Jackson asked Mr. Babusci about himself. Mr. Babusci states in his letter that:

I shared with him that I am living with cancer. I discussed the type of cancer I have, my experiences with the disease, treatment, and outlook. He took a concerned interest in who I am and my health. I was very impressed with his attention, regard, and compassion as I told him the story of my life and cancer journey. At no point did I feel rushed, or as an intrusion - his kindness and empathy were evident as he asked meaningful questions about how I was coping and feeling.

Id. Mr. Babusci returned to his meal, and when he later asked for the check, found that Mr. Jackson had paid it for him.

(f) Molly Pratik

Ms. Pratik states in her letter to the Court that Mr. Jackson saved her home from foreclosure. Heberlig Decl. ¶ 22 (Ex. 20 – letter from Molly Pratik). After finding out that Ms. Pratik was in a dire situation, he personally called her loan officer, who had stopped taking Ms. Pratik's calls, and negotiated with the bank on her behalf. Ms. Pratik writes "I would be homeless it if wasn't for Jesse, Jr." *Id.*

(g) Connie Lattimore

In 2011, Mr. Jackson saved Ms. Lattimore's home from foreclosure. As he has done for many of his constituents, Mr. Jackson did not just pawn off Ms. Lattimore's problem to a staffer, but intervened personally with her bank to save her home. Heberlig Decl. ¶ 23 (Ex. 21 – letter from Connie Lattimore).

(h) Joyce Smith

Ms. Smith described an example of Mr. Jackson's constituent service in her letter to the Court. She writes:

The home of a neighbor, Leonard Johnson, was in foreclosure and he was facing eviction four days before Christmas. Near the start of the recession, Mr. Johnson, a middle-age family man, had lost his job and had also exhausted his financial resources, trying to save his home. On behalf of my neighbor, I called Congressman Jackson's office. Mr. Johnson obtained assistance that allowed him to remain in his home about eleven more months. During that time, he was able to secure a job and to rent a home nearby, so that his daughter could continue at her same high school. Their hopelessness was replaced with hope!

Heberlig Decl. ¶ 24 (Ex. 22 – letter from Joyce Smith).

(i) Willie Mae Smith

Ms. Smith's son was addicted to drugs. She writes to the Court that she had nowhere to turn to and decided to write letters to her mayor, governor and congressman for help. Of all the letters she wrote, only Mr. Jackson responded. Mr. Jackson called Ms. Smith's son and spoke with him. Ms. Smith thought this would be the end of Mr. Jackson's help. She was wrong. Mr. Jackson found a drug rehabilitation clinic for her son and got him into a GED program. Ms. Smith reports that two years later, her son is drug-free, working and in college. Heberlig Decl. ¶ 25 (Ex. 23 – letter from Willie Mae Smith).

(j) Louise Taper

Ms. Taper writes to the Court that Mr. Jackson's kind words and attention got her through one of the hardest parts of her life. She writes:

[a] year ago my daughter, who is just a few years younger than Jesse, suffered a burst brain aneurysm. She was in critical condition for months and months. Jesse was constantly calling and texting me with words of encouragement, telling me to stay strong and that he and his family were praying for my daughter. His

[illegible]

[illegible]

III. SENTENCING ISSUES

A. The Federal Sentencing Guidelines Are Advisory and Only One of Several Factors To Be Considered in Sentencing

In *United States v. Booker*, 543 U.S. 220, 226-27 (2005), the Supreme Court held that the mandatory Sentencing Guidelines system violated the Sixth Amendment. With its opinion in *Booker*, the Supreme Court freed sentencing courts from the rigid, formalistic framework that existed under the Guidelines, replacing it with a system that grants judges the discretion to consider any relevant characteristic of an offense or of the particular defendant.

Under the Guidelines before *Booker*, courts were discouraged from considering factors such as the defendant's age, education and vocational skills, mental and emotional conditions, physical condition, ties to family and the community, or civic, charitable and public service. U.S.S.G. § 5H1.1-4, 6, 11. These factors were "not ordinarily relevant" in determining an appropriate sentence and could only be considered in extraordinary situations. After *Booker*, however, these are precisely the types of considerations courts must evaluate in sentencing when determining the "history and characteristics of the defendant" as required by § 3553(a)(1). *See*,

e.g., *Gall v. United States*, 128 S. Ct. 586, 602 (2007) (upholding district court’s consideration of defendant’s age). Indeed, *Booker* has breathed new life into 18 U.S.C. § 3661, which requires that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” *United States v. Jones*, 531 F.3d 163, 173 n.6 (2d Cir. 2008) (quoting § 3661). Thus, “factors disfavored by the Sentencing Commission may [now] be relied on by the district court in fashioning an appropriate sentence.” *United States v. Munoz-Nava*, 524 F.3d 1137, 1148 (10th Cir. 2008) (citing *Gall*).

While the Guidelines are no longer mandatory, sentencing courts are “obliged to ‘take account of’ [the Sentencing Guidelines] range along with the sentencing goals Congress enumerated in the [Sentencing Reform Act] at 18 U.S.C. § 3553(a).” *Cunningham v. California*, 127 S.Ct. 856, 867 (2007) (*quoting Booker*, 543 U.S. at 259, 264); *see also Gall*, 552 U.S. at 59 (“the Guidelines are only one of [seven] factors to consider when imposing a sentence,” and “§ 3553(a)(3) directs the judge to consider sentences other than imprisonment”); *United States v. Pickett*, 475 F.3d 1347, 1351 (D.C. Cir. 2007) (“The Court’s remedial opinion [in *Booker*] required the district court to treat the Guidelines as advisory only and as simply one factor to be considered in sentencing.”). “In the post-*Booker* world, the court must calculate and consider the applicable Guidelines range, but is not bound by it.” *United States v. Dorcely*, 454 F.3d 366, 375 (D.C. Cir. 2006). The sentencing judge must determine the applicable Guidelines range in the same manner as before *Booker*, including consideration of any policy statements issued by the Sentencing Commission. *Id.* at 376 n.6. Thereafter, *Booker* requires district courts to consider the Guidelines range and the other Section 3553(a) factors.

In particular, 18 U.S.C. § 3553(a) provides that in determining the sentence to be imposed, a court shall consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed --
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for --
 - (A) [in the Sentencing Guidelines] . . .
- (5) any pertinent policy statement --
 - (A) issued by the Sentencing Commission . . .
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C.A. § 3553(a) (2010).

Several courts have held that the Guidelines are entitled to no greater weight than any of the other § 3553(a) factors. *See United States v. Biheiri*, 356 F. Supp. 2d 589, 594 n.6 (E.D. Va. 2005) (“No individual factor is singled out as having greater weight; instead, the richness of factual diversity in cases calls on sentencing judges to consider all of the factors and to accord each factor the weight it deserves under the circumstances.”); *United States v. Simon*, 361 F. Supp. 2d 35, 40 (E.D.N.Y. 2005) (“[T]he Guidelines are advisory and entitled to the same weight

accorded to each other factor that the Court is instructed to consider by § 3553(a).”); *United States v. Renum*, 353 F. Supp. 2d 984, 986-987 (E.D. Wis. 2005) (giving equal weight to each factor listed in § 3553(a)).

B. The Stipulated Guidelines Analysis

Mr. Jackson has agreed with the Government on a Sentencing Guidelines calculation as part of his plea agreement. Under U.S.S.G § 2B1.1(a)(2), the base offense level is 6. A 14-level increase is applied for an amount of loss greater than \$400,000 pursuant to § 2B1.1(b)(1)(H). Pursuant to § 3B1.1(c), a 2-level increase is applied because Mr. Jackson was an organizer or leader in the conduct that resulted in his plea. A second 2-level increase is applied pursuant to § 3B1.3 based on an abuse of a position of trust. Lastly, a third 2-level increase is applied pursuant to § 2B1.1(b)(9)(A) based on a misrepresentation that Mr. Jackson was acting on behalf of a political organization.³ The parties also agreed that a two-level reduction is appropriate pursuant to § 3E1.1 due to Mr. Jackson’s acceptance of responsibility and that a further one-level reduction is appropriate pursuant to § 3E1.1(b) because Mr. Jackson assisted the Government by providing timely notice of his intention to plead guilty. The resulting Guidelines Offense Level is 23. The parties agreed that Mr. Jackson’s Criminal History Category is estimated to be I. Based on the calculation above, the stipulated Sentencing Guidelines range is 46 months to 57 months, and, should the Court impose a fine, the applicable Sentencing Guidelines fine range is \$10,000 to \$100,000.⁴

³ The Draft PSIR did not apply a 2-level increase based on § 2B1.1(b)(9)(A), resulting in a Guidelines Offense Level of 21. Draft PSIR ¶¶ 69-79, 134.

⁴ Because the Draft PSIR calculated a lower Guidelines Offense Level, the Sentencing Range recommended in the Report is 37 months to 46 months and the fine range recommended is \$7,500 to \$75,000. Draft PSIR ¶¶ 132, 149.

C. Mr. Jackson's History and Characteristics as well as the Nature of His Offense Warrant a Non-Guidelines Sentence

After evaluating the Sentencing Guidelines and calculating a potentially applicable Guidelines range, a sentencing court must consider the remaining § 3553(a) factors to “impose a sentence sufficient, but not greater than necessary,” to comply with the purposes set forth by Congress. *Kimbrough v. United States*, 552 U.S. 85, 89 (2007) (quoting § 3553(a)). Sentencing courts now have the obligation to consider factors that were discouraged under the pre-*Booker* mandatory Guidelines regime, such as the history and characteristics of a defendant, the nature of the offense, the need for deterrence, the likelihood of recidivism, and the public's need for protection, because they are relevant in determining the “history and characteristics of the defendant” under § 3553(a)(1). *E.g.*, *Kimbrough*, 552 U.S. at 93 (citation omitted); *accord Jones*, 531 F.3d at 172 n.6. In this case, Mr. Jackson's history and characteristics as well as the nature of his offense strongly favor a lenient non-Guidelines sentence.

1. History and Characteristics

(a) Mental Health

Mr. Jackson's mental health and need for continuing treatment support a below-Guidelines sentence. During sentencing, federal courts have the authority to determine whether a defendant's mental illness warrants a below-Guidelines sentence. *United States v. Christensen*, 18 F.3d 822, 826 n. 8 (9th Cir. 1994). In *United States v. Shore*, a court sentenced a defendant to probation rather than the ten to sixteen month Guidelines range because of severe depression and Post-Traumatic Stress Disorder. 143 F.Supp. 2d 74, 87 (D. Mass. 2001). The court in *Shore* acknowledged that imprisonment would interrupt the defendant's treatment and substantially impair her progress. *Id.* Similarly, in *United States v. Jones*, 158 F.3d 492 (10th Cir. 1998), the Tenth Circuit Court of Appeals upheld a district court's departure from the Sentencing

Guidelines based on the likely negative effect of incarceration on the defendant's rehabilitative counseling. In that case, the court held that "[m]aximizing the effectiveness of rehabilitative counseling clearly serves one of the primary purposes of sentencing, correctional treatment." *Id.* at 504; see also *United States v. Wachowiak*, 412 F.Supp.2d 958, 962 (E.D. Wis. 2006) (sentencing court held that the progress made by a defendant in therapy decreased the likelihood of recidivism and therefore supported a below-Guidelines sentence).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) Community Service

Another factor courts consider when evaluating a defendant's history and characteristics is service to his community. *See, e.g., United States v. Nellum*, No. 2:04-CR-30-PS 2005 WL 300073, at *4 (N.D. Ind. Feb. 3, 2005) (finding defendant's service to his country "very relevant . . . when considering his history and characteristics."). As described above, Mr. Jackson has made substantial contributions to the lives of others, as an activist, a Member of Congress and an individual.

We respectfully urge the Court to read the many examples of Mr. Jackson's generosity described in the letters of support. This outpouring of support reveals the truly extraordinary nature of the man who is before the Court for sentencing.

The Court should grant Mr. Jackson a non-Guidelines sentence well below the PSIR's recommended Guidelines range in light of Mr. Jackson's history and characteristics of strong family ties and substantial community service. The words of the *Adelson* court, crediting another defendant's good works, are especially applicable here:

[S]urely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, 'the history and characteristics of the defendant.'

United States v. Adelson, 441 F. Supp. 2d 506, 513-14 (2d. Cir. 2006).

Mr. Jackson has good work left to do. Many of the letters submitted to the Court request that Mr. Jackson's sentence be as short as possible so that he may continue his lifelong work fighting for equality and justice. *See, e.g., Heberlig Decl.* ¶¶ 30, 14 (Ex. Nos. 28 and 12 – letters from Frederick Anderson and Trunell and Alexis Felder).

We urge the Court to exercise its discretion under *Booker* to extend leniency to Mr. Jackson in recognition of the good works that he has performed for others throughout his life and his ability to continue to make a positive impact on society if given the opportunity.

(c) Family Ties

One of the most common factors relied upon by sentencing courts to justify sentence below the Guidelines range is the strength of a defendant's family ties. Among other things, courts evaluate the level of support a defendant enjoys from his or her spouse and children when determining whether to impose a non-Guidelines sentence. *See United States v. Simon*, 361 F. Supp. 2d 35, 42 (E.D.N.Y. 2005) (sentencing defendant convicted of conspiracy to distribute crack cocaine and using a firearm to a lower non-Guidelines sentence in part because defendant "had been a caring father"); *United States v. Nellum*, No. 2:04-CR-30-PS, 2005 WL 300073, at *4 (N.D. Ind. Feb. 3, 2005) (sentencing defendant guilty of crack cocaine distribution to a lower non-Guidelines sentence in part due to his good relationship with his children).

Letters of support written by family members, as well as their presence in the courtroom, are indicators of the strong family ties enjoyed by a defendant. *Nellum*, 2005 WL 300073, at *5. As noted above, Mr. Jackson's parents and sister have written lengthy letters describing the Jackson family's close bonds and their relationships with Mr. Jackson. Mr. Jackson's sister writes "[m]y Brother is an inextricable part of me and I love him with all of my heart---with each and every beat of it." Heberlig Decl. ¶ 7 (Ex. 5 – letter from Santita Jackson). She continues: "As painful as it is for me to have to write this letter to you under these circumstances, I am nonetheless filled with gratitude, pride and joy for having the privilege of being his Sister" *Id.*

If Mr. Jackson is sentenced to a lengthy prison term, the effect on his children will be devastating. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If both Mr. and Mrs. Jackson are sentenced to lengthy, concurrent prison sentences, their children will be without parents during many of their formative years.

2. Nature of the Offense

As soon as Mr. Jackson was confronted with evidence of his wrongdoing, he began cooperating with the Government to address his conduct. He assisted the Government, through his attorneys, to identify improper campaign expenditures. He entered into a plea agreement pre-indictment. He pleaded guilty without qualification before the Court, permitting the Government to avoid preparing for a trial and permitting the Court to allocate its resources efficiently. When asked by the Court at his plea hearing if he understood he was giving up the right to trial, Mr. Jackson replied “I have no interest wasting the taxpayers’ time or money.” Throughout this process he has fully accepted responsibility for his actions. When asked about the nature of his conduct, Mr. Jackson replied to the Court, “I mislead the American people . . . For years I lived off my campaign . . . I used money I shouldn’t have used for personal purposes.” He made no excuses.

In many ways, the Jackson for Congress campaign and Mr. Jackson were alter egos. The campaign’s office was in Mr. Jackson’s basement. Fundraising trips coincided with family vacations. Mr. Jackson’s wife was his campaign manager. While Mr. Jackson admits his conduct was a serious violation of the law, the victim of his crime was his own campaign, an organization that had as its sole purpose his own continued reelection to Congress.

And while it is true that our system of campaign finance is based on a donor’s trust that campaign funds will be used appropriately, to date none of Mr. Jackson’s thousands of political donors have contacted the Court regarding Mr. Jackson’s case. It is unlikely that they consider

themselves to be his victims. In fact, the Draft PSIR states that Mr. Jackson's conduct "is a Title 18 offense and *any specific victim has yet to be identified*. The defendant diverted campaign funds *from his own campaign* for personal use." Draft PSIR ¶ 65 (emphasis added).

D. There Is No Need To Protect the Public Through a Prison Sentence Because There Is No Chance of Recidivism

In determining an appropriate sentence, courts must also consider the need for the sentence to "protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(C) (2000). Two key indicators of the likelihood of recidivism are the defendant's age at the time of sentencing and criminal history. Mr. Jackson will be 48 years old at the time of sentencing and has no criminal history.

A below-Guidelines sentence is appropriate in the case of an older, first time offender because the Sentencing Guidelines do not take into account the fact that defendants who are over the age of forty "exhibit markedly lower rates of recidivism in comparison to younger defendants." *United States v. Carmona-Rodriguez*, No. 04 CR. 667 (RWS), 2005 WL 840464, at *4 (S.D.N.Y. Apr. 11, 2005) (citations omitted); *see also United States v. Hernandez*, No. 03 CR. 1257 (RWS), 2005 WL 1242344, at *5 (S.D.N.Y. May 24, 2005) (imposing lower non-Guidelines sentence on 49-year old defendant based on the same reasoning); *Simon*, 361 F. Supp. 2d at 48 (sentencing 43-year old defendant to lower non-Guidelines sentence because "[t]he Guidelines' failure to account for [the correlation between increased age and decreased recidivism rates] renders it an imperfect measure of how well a sentence protects the public from future crimes of the defendant.").

Together, Mr. Jackson's age and his lack of criminal history eliminate the need to protect the community from the risk of recidivism. A below-Guidelines sentence is therefore appropriate.

IV. CONCLUSION

Mr. Jackson's need for ongoing mental health treatment, outstanding record of good works both large and small, as well as his close family and community ties all argue for leniency. The nature of his offense has left no victims asking for justice. The circumstances of his resignation and plea, his age, and his lack of criminal history preclude him from relapsing into the same conduct again. Due to his and his wife's resignations from public office, Mr. Jackson's family has lost its only sources of income. The harsh spotlight of the media that has followed him at every step of the investigation, his plea and his sentencing has already punished Mr. Jackson and his family immeasurably. Mr. Jackson has already lost so much due to his mistakes that a below-Guidelines sentence is warranted, just and necessary to punish him appropriately.

Respectfully submitted,



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